

JONES HIRSCH CONNORS MILLER & BULL P.C.

ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004

NEW YORK

CONNECTICUT

MINEOLA

NEW JERSEY

WRITER'S EMAIL

TELEPHONE: (212) 527 - 1000
FACSIMILE: (212) 527 - 1680

WRITER'S DIRECT
DIAL NUMBER

cobryan@jhcb.com

(212) 527-1621

Charles E. O'Bryan
Principal

Courtesy copy, original filed by ECF, Docket No.: CV-10-4661

March 9, 2012

BY HAND/ECF

Honorable Steven M. Gold
United States Chief Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East, Room 13D
Brooklyn, New York 11201

Re: Rodriguez v. St. Vincent's
Services, et al
Civil Docket No.: 10-CV-4661

Patrick Alford v. The City of
New York, et al
Civil Docket No.: 11-CV-1583
10-CV-04661

P.A., Jr. v. City of New York; et al
Civil Docket No.: 10-CV-04661

Our File No.: 06100-16617

Dear Magistrate Gold:

This office represents the interests of St. Vincent's Services, Inc. s/h/a St. Vincent's Services Incorporated, Carlene Anderson, and Zoila Villalta ("St. Vincent's" or "Defendant") in the above-referenced matters.

This letter is being submitted to the Court in light of the application for a Protective Order served by co-defendant City of New York and in the wake of the Court's disposition of said application. We are seeking a Protective Order as to the Deposition Notice ("Dep. Not.") served on St. Vincent's. The

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Dep. Not. served on St. Vincent's is identical to that served on the City - except for seeking information regarding a privilege log - and the issues are similar.

We, too, share the concerns voiced by counsel for the Municipal defendants with respect to the enclosed Dep. Not. pursuant to Fed.R.Civ.P. 30(b)(6), served upon St. Vincent's by counsel for plaintiff P.A., Jr. We specifically draw the Court's attention to the items listed in "Schedule A" annexed to the Dep. Not. These are topics that counsel for P.A., Jr. intends to address during a deposition of a witness from St. Vincent's.

The scope of the proposed deposition exceeds the boundaries which was addressed during previous status conferences or embodied in this Court's various Orders.

St. Vincent's seeks a Protective Order pursuant to Fed.R.Civ.P. 26(c) as the Schedule A list of topics is contrary to this Court's prior Orders and exceeds the limits imposed by statute.

"Schedule A" items 1, 2, 3, and 4 are addressed to the structure of St. Vincent's IT Department and its policies and procedures as regards document management, storage, and back-up retention. "Item 5" attempts to elicit information regarding the identity of every person at St. Vincent's who received the document retention notice. While Your Honor has already ruled that ACS was not required to produce this information, this issue was never addressed with respect to St. Vincent's.¹ Nevertheless, as the bulk of disclosure is CONNECTIONS-based, the issues addressed to St. Vincent's as to that data base, were as the City set forth already addressed by the prior Orders.

The last item listed in Schedule A "5" inquires about "...defendant's collection of documents in this case...." Once again, this is information which as the Court notes can be resolved by resort to interrogatories as opposed to the vexatious, expensive, and time-consuming Rule 30(6)(b) deposition.

On behalf of the St. Vincent's defendants we would request that as in the case with co-defendant City, counsel be directed

¹ By Order dated September 27, 2011, this Court ordered the defendants certify that their clients were informed of their legal obligation to preserve documents relevant to this litigation. This was done. (See Doc. 125 annexed as Exhibit "C".)

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to propound interrogatories "rather than by taking depositions...."

CONNECTIONS FILE:

As we have informed the Court and plaintiffs' counsels, the bulk of the documents generated by this case reside in CONNECTIONS, a State-maintained, State-created, and State-administered website. The issues and difficulties of document review and production are succinctly articulated in the City's March 1, 2012 application. For the Court's convenience, a copy is annexed as Exhibit "B".

Any and all issues arising from the contents of the CONNECTIONS file - all well-documented in the City's application - are addressed by dint of the Court's directive to P.A., Jr.'s counsel to serve interrogatories.

St. Vincent's, as ever is prepared to produce relevant fact witnesses. To engage in extended and expensive E.S.I. discovery premised upon the notion of "presumption of spoliation of Zubake or Pensions Committee dimension(s)..." as noted by the City is counter-productive. A recurring assertion by both defense counsel in this matter is that this is not E.S.I.-drive litigation.

We agree that inquiry of relevant fact witnesses to ascertain the underlying facts and determining if the proffered documents are complete - and whether any such missing documents are relevant to the claims asserted on PA, Jr.'s, behalf - would be a more judicious use of time. It would also result in a more precise inquiry should a Rule 30(b)(6) deposition be deemed necessary by this Court.

We thank the Court in advance for its anticipated cooperation.

Respectfully submitted,


Charles E. O'Bryan
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CEO.dml
Enclosure

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cc: VIA HAND/ECF

Honorable John Gleeson
United States District Court
Eastern District of New York
225 Cadman Plaza, Room 727 S
Brooklyn, New York 11201

VIA ECF

LAW OFFICE OF ROBERT OSUNA, P.C.
Attorneys for Plaintiff Jennifer Rodriguez
11 Park Place, Suite 600
New York, New York 10007
(212) 233-1033

LAW OFFICES OF AMBROSE W. WOTORSON, JR.
Attorneys for Plaintiff Jennifer Rodriguez
26 Court Street
Brooklyn, New York 11242-1118
(718) 797-4861

LAW FIRM OF JAMES R. LAMBERT, ESQ.
Attorney for Plaintiff Patrick Alford, Sr. and "J.A."
1491 Richmond Road
Staten Island, New York 10304
(718) 667-5000

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP
Attorneys for Plaintiff, P.A., JR.
Four Times Square
New York, New York 10036
(212) 735-3000
Attn: Jonathan J. Lerner, Esq.

BARRY McTIERNAN & MOORE
Attorneys for Defendants CITY OF NEW YORK,
OMAR LOFTON, ROBERT SALEMI, NATALIA ROSADO,
ZANETTE SARGEANT, SHARICE SCOTT, EMMANUEL
OKON, and JAKE NIXON, JR.
2 Rector Street
New York, New York 10006
(212) 313-3606
Attn: Suzanne M. Halbardier, Esq.

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VIA CERTIFIED MAIL/RRR and REGULAR MAIL

Ms. Librada Moran
130 Vandalia Avenue, #11B
Brooklyn, New York 11239

847419